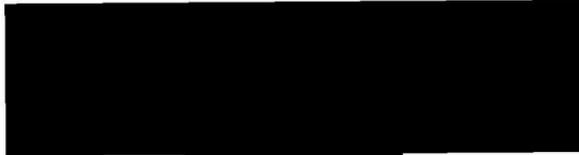




U.S. Citizenship
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Office: NATIONAL BENEFITS CENTER

Date: MAR 28 2006

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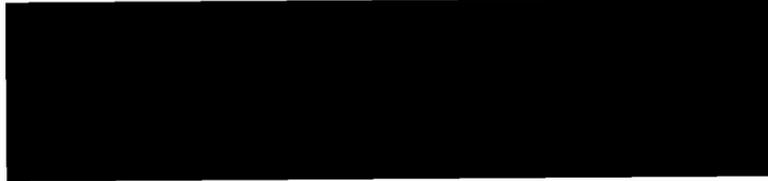
IN RE:

Applicant:



APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, National Benefits Center, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The director determined that the applicant was inadmissible under section 212(a)(2)(C) of the Immigration and Nationality Act (Act) because he had been convicted of controlled substance trafficking or there was reason to believe that he was a illicit trafficker in a controlled substance. The director further determined that this ground of inadmissibility could not be waived pursuant to section 245A(d)(2) of the Act, and, therefore the director denied the application.

On appeal, counsel asserts that the applicant's conviction for transporting a controlled substance under section 1179(a) of the California Health and Safety Code did not render him a drug trafficker. Counsel further contends that the applicant's two convictions for crimes involving controlled substances did not render him inadmissible because such convictions had been expunged.

An applicant for permanent resident status under the provisions of LIFE Act must establish that he or she is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the Act. Section 1140(c)(2)(D)(i) of the LIFE ACT.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802). Section 212(a)(2)(A)(i)(II) of the Act.

An alien is also inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802). Section 212(a)(2)(C)(i) of the INA.

A waiver of grounds of inadmissibility is not available to an alien found to be inadmissible under specifically enumerated grounds of section 212(a) of the Act including sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act. Section 245A(d)(2)(B)(ii) of the Ac; 8 C.F.R. § 245a.3(g)(3); and, 8 C.F.R. § 245a.18(c)(2).

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible to adjust to permanent resident status under 8 C.F.R. § 245a.18(a)(1).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The record contains court documents from the Superior Court of the State of California for the County of San Diego Central Division which reflect that the applicant was convicted of a felony violation of section 11379(a) of the California Health and Safety Code, transporting a controlled substance-methamphetamine, and a misdemeanor violation of section 11377(a) of the California Health and Safety Code, possession of a controlled substance-methamphetamine, in this court on March 12, 2001. (Case SCD156173).

The intent to distribute a controlled substance has been inferred solely from possession of a large quantity of the substance. *United States v. Koua Thao*, 712 F.2d 369 (8th Cir. 1983) [154.74 grams of opium]; *United States v. Love*, 559 F.2d 107 (5th Cir. 1979) [26 pounds of marijuana]; *United States v. Muckenthaler*, 584 F.2d 240 (8th Cir. 1978) [147 grams of cocaine].

The intent to distribute a controlled substance has also been inferred from possession of large sums of unexplained currency, firearms, equipment used to dilute the purity of the controlled substance, and implements such as sophisticated scales commonly used in connection with the distribution of controlled substances. See *United States v. LaGuardia*, 774 F.2d 317, 320 (8th Cir.1985); *United States v. Marszalkowski*, 669 F.2d 655, 662 (11th Cir.), *cert. denied*, 459 U.S. 906, 103 S.Ct. 208, 74 L.Ed.2d 167 (1982).

The record contains no evidence such as an arrest report or court documents to demonstrate that the applicant's criminal convictions involved the possession of a large quantity of a controlled substance, large sums of unexplained currency, firearms, equipment used to dilute the purity of the controlled substance, and implements such as sophisticated scales commonly used in connection with the distribution of controlled substances. Without such evidence, it cannot be determined if it is either known or there is reason to believe that the applicant is or has been an illicit trafficker in any such controlled substance. Therefore, the record as it currently exists cannot support the director's conclusion that the applicant is inadmissible under section 212(a)(2)(C) of the Act. Nevertheless, the applicant is ineligible to adjust to permanent resident status under 8 C.F.R. § 245a.18(a)(1) as a result of his felony conviction for transporting a controlled substance under section 11379(a) of the California Health and Safety Code.

Although the application may not be approved based on the applicant's felony conviction, the regulations at 8 C.F.R. § 245a.20(a)(2) state, in pertinent part:

Denials. The alien shall be notified in writing of the decision of denial and of the reason(s) therefore. When an adverse decision is proposed, CIS shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted a period of 30 days from the date of the notice in which

to respond to the notice of intent to deny. All relevant material will be considered in making a final decision.

A review of both the electronic and administrative record reveals that a notice of intent to deny was never issued to either counsel or the applicant. Accordingly, the decision of the district director is withdrawn. The case will be remanded for the purpose of the issuance of a notice of intent to deny as well as a new decision to both counsel and the applicant. The new decision, if adverse, shall be certified to this office for review.

ORDER: This matter is remanded for further action and consideration pursuant to the above.